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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/665,676	09/19/2003	James Patterson Bryant	12093/926	6268
26646	7590	03/24/2005	EXAMINER	
KENYON & KENYON ONE BROADWAY NEW YORK, NY 10004			SMALLEY, JAMES N	
			ART UNIT	PAPER NUMBER

3727

DATE MAILED: 03/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/665,676

Applicant(s)

BRYANT, JAMES PATTERSON

Examiner

James N Smalley

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-2 and 6-7 rejected under 35 U.S.C. 102(b) as being anticipated by Berezansky US 5,462,322.

Berezansky '322 teaches a clamp comprising a top clamp (1) with a threaded top clamp bolt hole (5), a base clamp (2) with a threaded base clamp bolt hole (6), a bolt (4), and a lip holding area (7) and (8). The bottom clamp can rotate from the top clamp in the unsecured position about hinge (3). In a closed position the serrated portions (7) and (8) form a nearly circular geometry, which is read by the Examiner to comprise an "approximately semi-circular geometry."

Regarding the limitations whereby the claimed device is to be used for securing a drum lid, Examiner notes it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Regarding claim 6, the area around the threaded hole is read to be a "hardened seat."

Regarding claim 7, the inside edge of the serrated portion is semi-circular and thus read to be a "rounded knuckle."

3. Claims 1-2 and 5-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Kusta US 6,435,576.

Kusta '576 teaches a ring for closing an open-head drum, comprising a top clamp, read by the Examiner to comprise (36) and half of ring (32), a base clamp, read by the Examiner to comprise (34) and the remaining half of ring (32), bolt (18), whereby the ring (32) comprises the lip holding area. The base

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clamp (34) can be rotated relative to the top clamp (36) about a hinge defined at a location in ring (32) diametrically opposite lugs (34) and (36) on the ring.

Regarding the limitations whereby the claimed device is to be used for securing a drum lid, Examiner notes it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Regarding claim 5, the diameter of the threaded cylinder (44) is 0.625 inches (col. 4, lines 63-64).

Regarding claim 6, the area around the threaded hole is read to be a "hardened seat."

Regarding claim 7, the lower portion of the ring (32) is read to be a "rounded knuckle."

#### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berezansky US 5,462,322.

Regarding claims 3-4, it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. Examiner notes because the door is to be used in security operations, it would be obvious to form the device of a strong, highly rigid material such as metal. Furthermore, it is known to form metallic devices of stainless steel to prevent corrosion.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the device of Berezansky '322 of a non-corrosive material, such as stainless steel, motivated by the benefit of preventing rusting of the device parts.

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Regarding claim 5, Examiner notes a change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the overall size of the device of Berezansky '322 such that the bolt diameter would be formed to less than 1 inch, motivated by the benefit of sizing the device to fit doors and door handles of various sizes.

6. Claims 3-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kusta US 6,435,576.

Regarding claims 3-4, it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. It would be obvious to form the clamping ring of a strong, highly rigid material such as metal. Furthermore, it is known to form metallic devices of stainless steel to prevent corrosion.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the device of Kusta '576 of a non-corrosive material, such as stainless steel, motivated by the benefit of preventing rusting of the device parts.

7. Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Montross US 1,059,747.

Montross '747 teaches a clamp comprising a top clamp (7) with a top clamp bolt hole, a base clamp (8) with a threaded base clamp bolt hole (17), a bolt (15), and a lip holding area (9) and (10). The bottom clamp can rotate from the top clamp in the unsecured position about hinge (13).

The top clamp hole is not threaded.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide threading in the top hole, motivated by the benefit of better securing a connection between the top clamp and the bolt.

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Regarding the limitations whereby the claimed device is to be used for securing a drum lid, Examiner notes it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Regarding claims 3-4, it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. It would be obvious to form the device of a strong, highly rigid material such as metal. Furthermore, it is known to form metallic devices of stainless steel to prevent corrosion.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the device of Montross '747 of a non-corrosive material, such as stainless steel, motivated by the benefit of preventing rusting of the device parts.

Regarding claim 5, Examiner notes a change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the overall size of the device of Montross '747 such that the bolt diameter would be formed to less than 1 inch, motivated by the benefit of sizing the device to fit varies sized flanges.

Regarding claim 6, the area around the threaded hole is read to be a "hardened seat."

Regarding claim 7, flange member (9) is read to be the rounded knuckle.

8. Claims 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Montross US 1,059,747 in view of Kunin US 1,450,687.

Montross '747 does not teach a method of applying three clamps to secure a drum.

Kunin '687 teaches applying three clamps (13) about the periphery of a drum to secure the drum in a closed position.

It would have been obvious to use the clamp of Montross '747 in the intended manner, applying three clamps about the periphery of a drum, motivated by the benefit of securing the drum closure in a secure manner about the container opening.

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**Conclusion**

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

US 5,657,892

US 2,025,932

US 4,411,372

US 1,864,313

US 2,523,760

US 1,780,534


US 2,246,470

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N Smalley whose telephone number is (571) 272-4547. The examiner can normally be reached on M-Th 9-6:30, Alternate Fri 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (571) 272-4549. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jns

  
NATHAN J. NEWHOUSE  
PRIMARY EXAMINER  
3/21/05